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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/027,295

12/20/2001

Gretchen Louise Elder

6823D

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06/02/2004

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/027,295

Applicant(s)

ELDER ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Interference*

1. The Request for Interference is noted. However, since none of the claims are in condition for allowance, an interference has not been evoked.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-5 rejected under 35 U.S.C. 103(a) as being unpatentable over Roe USPN 5609587 in view of McCormack USPN 5695868.

As to claim 1, Roe discloses the present invention substantially as claimed. However, Roe does not disclose a vapor permeable backsheet, which defines a Water Vapor Transmission Rate of at least about 2300 grams per square meter per 24 hours,

Art Unit: 3761

calculated according to a Water Vapor Transmission Test. McCormack discloses a breathable film/nonwoven composite suitable for use as an outer cover in absorbent articles (col. 1, lines 13-26 and col. 16, lines 23-27). McCormack discloses the breathable film/nonwoven has a water vapor transmission rate of  $4100 \text{ g/m}^2/24 \text{ hrs.}$ , which is within the claimed range, (col. 15, line 65 through col. 16, line 7) for the benefit of providing breathability and reducing skin hydration (col. 16, lines 9-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the article of Roe with a vapor permeable backsheet having the claimed water vapor transmission rate for the benefits disclosed in McCormack. Additionally Roe discloses a breathable backsheet is desired (Roe col. 5, lines 60-62).

Roe/McCormack discloses a disposable absorbent article which defines a front waist region, a rear waist region, and a crotch region which interconnects said front and rear waist regions (Roe Figure 3). The absorbent article comprises:

a) a vapor permeable backsheet which defines a Water Vapor Transmission Rate of at least about 2300 grams per square meter per 24 hours (McCormack col. 15, line 65 through col. 16, line 7), calculated according to a Water Vapor Transmission Test as set forth in the specification of the present invention. McCormack discloses the Water Vapor Transmission Test was conducted according to ASTM E 96-80 (McCormack col. 11, lines 50-52), which is disclosed on page 50, lines 11-13 of the present application;

b) a liquid pervious topsheet **520** positioned in facing relation with the backsheet 530;

c) an absorbent core **540** located between said backsheet and said topsheet (Roe col. 5, line 66 through col. 6, line 1);

and d) a skin care composition on at least a portion of a wearer-contacting surface of the absorbent article (Roe Abstract and col. 10, lines 25-31), which comprises from about 10 to about 95 weight percent of an emollient (Roe col. 17, lines 61-64) and from about 5 to about 90 weight percent of a wax (Roe col. 21, lines 35-38) .

As to claim 2, Roe/McCormack disclose the composition further comprises sorbitol, which is known in the art as a viscosity increasing agent and is selected from the claimed group of materials (Roe col. 10, lines 53-62).

As to claim 3, Roe/McCormack discloses the emollient is selected from the claimed group of materials (Roe col. 15, line 47 through col. 16, line 24).

As to claim 4, Roe/McCormack discloses the emollient is a petroleum-based emollient selected from the group consisting of petrolatum, mineral oil, and mixtures thereof (Roe col. 16, lines 6-33).

As to claim 5, the wax is selected from the group consisting of the claimed materials (Roe col. 21, lines 20-24).

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Braun et al. USPN 4828556 is cited to show a breathable composite barrier fabric. Quay USPN 5595723 is cited to show sorbitol as a viscosity increasing agent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens  
Examiner  
Art Unit 3761



May 27, 2004